

Ombudsman's Determination

Applicant	Mrs H
Scheme	NHS Superannuation Scheme (the Scheme)
Respondents	Scottish Public Pensions Agency (SPPA)

Outcome

1. I do not uphold Mrs H's complaint and no further action is required by SPPA.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs H, with her husband acting as her representative, is in dispute with SPPA about whether she received a refund of her contributions in respect of a previous period of membership with the Scheme. Mrs H also complains that SPPA did not explain this in a letter sent in 2000, which has meant she missed the opportunity to buy back that period of service.
4. The Scheme Regulations
5. The Scheme Regulations in place at the time were the NHS Superannuation Scheme (Scotland) Regulations 1980.

Regulation 10 (1) says: "On ceasing to be an officer, a person shall be entitled to receive from the Secretary of State-

(a) an annual pension if -

(iv) he had completed 5 years' service or he is a person to whom regulation 39(4) or 29(5)(b) applies, and in any such case he has not, within 12 months and without first having become entitled to receive payment of such annual pension, again become an officer";

6. Regulation 39 (1) says: "Subject to the following provisions of this regulation, a person who on ceasing to be an officer does not become entitled to receive payment of any other benefit under these regulations and who holds no other employment in which he is an officer shall be entitled to receive from the Secretary of State a return of his contributions....,

Background information, including submissions from the parties

7. Mrs H had several separate periods of membership within the Scheme.
8. The first of these began in August 1973 and ended in May 1978. This period of membership was refunded to Mrs H. The period of membership relevant to Mrs H's complaint is between May 1979 and May 1983, consisting of 4 years and 5 days' worth of membership. Mrs H re-joined the Scheme in August 1999 and remains a member until present day.
9. In 1999, Mr H wrote to SPPA enquiring about Mrs H's previous membership contributions and the length and cost of buying back previous years membership in order to fill the gaps in her service record.
10. In particular, the letter said "Spring 1979 to July 1982 worked full time at Stobhill hospital – I am not clear if she made contributions during this period".
11. SPPA responded in February 2000, explaining the maximum service allowed and provided details about the length and cost of purchasing additional years. Under the section 'Refunded Service', SPPA said "Any service prior to 6 April 1978 that you have previously had refunded can be purchased at half the normal cost". The schedule sent with the letter itemised the pre 1978 service of 4 years and 219 days.
12. Separately, it stated that 8 years and 282 days were eligible to purchase and referred to a breakdown of that figure which read:
 - (1) Years and days purchased at full cost 4 years 63 days
 - (2) Years and days purchased at half cost 4 years and 219 daysTotal (1) and (2) 8 years and 282 days.
13. Mrs H says she assumed that the service between 1979 and 1983 had been maintained based on the contents of SPPA's letter of February 2000 . Therefore she and her husband purchased the service that was available at half cost.
14. In February 2015, Mrs H asked for a retirement benefits quotation as an indication of what her benefits are likely to be when she reaches age 60 in August 2015. The estimate of pension service at the end of August 2015 was less than she and her husband were expecting. They telephoned SPPA and were advised that SPPA only held records of pensionable service dating after 1 August 1999 for Mrs H.
15. On 14 May 2015 SPPA advised that a refund had been paid in June 1984 for the service undertaken by Mrs H between 1979 and 1983. The letter enclosed a copy of a record showing a payment numbered 009063 for £934.38 issued to Mrs H on 8 June 1984 at her current address.
16. Mrs H maintains she never received that cheque.

17. Mrs H raised various points in her complaint to the SPPA, some of her key areas of concern are summarised below.
- Neither she nor her husband had any prior knowledge that a cheque had been issued in respect of that refund.
 - SPPA could not provide evidence confirming that Mrs H had received and cashed the cheque.
 - £900 was a significant amount of money at the time and she and her husband would have noticed such a large amount had it been deposited.
 - In 1985, they had taken an additional mortgage of £1,000 to pay for home repair. In her view, they would not have taken the loan had it been known a refund of £900 was due from SPPA.
 - They would not have written to SPPA in 1999 specifically enquiring about the different periods when she returned to work for the SPPA, including the period covering 1979 to 1983, if they had knowledge that that period had already been refunded.
 - The 2000 letter did not directly answer their earlier request for clarification of her service history. It made no specific mention of the period May 1979 to May 1983. Had she known in February 2000, that the 1979 to 1983 period of membership had not been included in her records, she would have opted to purchase it, even if it were at full cost.
18. SPPA responded to the complaints via its internal dispute resolution (IDR) procedures.
19. In the first stage IDR response, SPPA explained that because Mrs H had less than 5 years' qualifying service and incurred a disqualifying break of more than one year when she returned to service, these periods could not be treated as continuous. Therefore, a payable order was issued to Mrs H at the address where she currently lives. SPPA confirmed it never received the mail back as "undelivered" therefore, it was reasonable to conclude it had been received by the intended recipient. Further to this, SPPA say "We have contacted HMRC who confirmed that SPPA submitted the relevant Contributions Equivalent Premium (**CEP**) payment and no longer hold contacting-out liability in respect of the state second pension scheme..." .
20. On the issue about the ability to purchase that period of service, SPPA explained that amendments to regulation Q1(2)(B) of the regulations governing the Scheme removed the facility to purchase additional pension from 31 March 2008". Because of this, SPPA are unable to allow Mrs H the opportunity to buy back any further periods of service.

21. Consequently, SPPA concluded that the service for the period 1 May 1979 to 12 May 1983 had been refunded and could neither be included in the calculation of her pension benefits, nor purchased as past added years.
22. The second stage IDR decision maker considered the following key information:
 - (i) that there is a record that the pensionable order was issued and a record of its serial number
 - (ii) a CEP was made and received by HMRC
 - (iii) there is no record of the return of the payable order and
 - (iv) there is no indication on Mrs Smith's record that there had been or has subsequently been any difficulty with delivery of post issued to her address.
23. It therefore concluded that on the balance of probabilities a refund payment was made to Mrs H on 8 June 1984 which discharged the scheme's liabilities to her for the period in question.
24. The response concluded that Mrs H's service in the [Scheme] for the period 1 May 1979 to 12 May 1983, had been refunded and cannot be included in the calculation of her pension benefits, or purchased as past added years. An apology was made to Mrs H that the enquiry regarding contributions made between 1979 and 1983 had not been answered in SPPA's letter of February 2000.
25. Mrs H referred the complaint to this service.

Adjudicator's Opinion

26. Mrs H's complaint was considered by one of our Adjudicators who concluded that no further action was required by SPPA. The Adjudicator's findings are summarised briefly below:
 - Given the length of time that has passed, it is now difficult to locate or discover what happened to the cheque. There is insufficient evidence that will allow the Adjudicator to investigate this issue further.
 - SPPA were able to produce written confirmation from HMRC that it had a record on its system for a CEP covering the period 1979 to 1983 which supports the contention that SPPA made a refund payment covering that period.
 - All parties acknowledge that the letter of February 2000 was incomplete in terms of the questions asked, and what was answered. Because SPPA did not confirm exactly what happened to the service between 1979 and 1983, it would have been reasonable to have clarified that issue before proceeding with the purchase of additional years.

27. Mrs H did not accept the Adjudicator's Opinion and the complaint has been passed to me to consider. Mrs H, in her response to the Adjudicator's Opinion, said in summary:
- The information provided by HMRC proves that HMRC received a payment sent to them; it does not prove that any payment was received by Mrs H.
 - SPPA accepts it is unable to provide the required legal proof that a refund was made in 1984, and was subsequently cashed.
 - The letter of February 2000, is incomplete and misleading because "there is no mention whatsoever of the service under dispute whilst there is mention of the previously refunded service prior to 6 April 1978".
28. Further information was requested from SPPA to clarify the process which was in place at the time. SPPA explained:
- Due to the lapse in time, there is no documentation to confirm the exact process which was carried out in 1984. The member could initiate a return of contribution by completing a form or SPPA could initiate the payments as a result of a review of its records. The member would have been written to to confirm their address and advised a refund was due. On receipt of a response a refund would then be paid.
 - The current procedure is to process the refund first and then make the CEP payment, and this procedure was likely to be the same as the procedure in place in 1984 though it could not confirm that it definitely was.
 - If a payable order could not be paid or was returned, there would usually be a stamp on the exit print on the members record stating 'refund in suspense'. No such mark was found on Mrs H's exit print or records.
29. SPPA could not confirm what correspondence was sent at the time. There were minimum records kept, known as the 'Exit Print'. This is because, firstly due to the passage of time, and secondly because the member has received her refund and extinguished her rights in the scheme. They confirmed enquiries were made with the department which issued the payment order, but no records are held going back as far as 1984. Mrs H has confirmed that she moved to her current address in 1982 but does not hold any correspondence from the scheme prior to 1999, the year in which she rejoined it.
30. I have considered the comments made by Mrs H and SPPA, which in my view do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs H for the sake of completeness.

Ombudsman's decision

31. In 1984 Mrs H had no right to a deferred pension because she had less than 5 years' service. Under the Regulations she was entitled to a return of contributions. I have to decide on the balance of probabilities whether the return of contributions was made.
32. It is impossible now to ascertain with absolute certainty, what events took place in 1984, some 30 years ago. The only record of what happened in 1984 is the remaining scheme record.
33. The scheme records show that in 1984, SPPA followed a process to return her contributions. There is a clear record of a payment order being issued, including who payment was made to and where it was sent. Mrs H's name and address were recorded correctly. The HMRC records also confirm a CEP being paid to reinstate her contracted-out (Guaranteed Minimum Pension) liability in respect of her membership. The scheme records contain no indication that the process was incomplete. Mrs H has produced no evidence that disproves the scheme record. I am therefore satisfied on the balance of probabilities that the return of contributions was made as required by the Regulations.
34. Mrs H says had she known that she had a gap in her service history she would have taken the opportunity to buy additional years, even at full price. The letter of 2000 did not specifically answer the question about the extent of her service history. I accept that she may not have known precisely how long it was, but the letter did set out two periods which could be purchased, one at half price, one at full price and the opportunity to buy the full price years was not taken. I do not find that SPPA misrepresented the position to Mrs H. They made no representation at all about the service period in question and it was not in my view reasonable to rely on the absence of an answer to decide not to take up the option of purchasing additional years at full price.
35. Therefore, I do not uphold Mrs H's complaint and no further action is required by SPPA.

Karen Johnston
Deputy Pensions Ombudsman
18 November 2016